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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,212

04/19/2004

Judith Lynn Bryan

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2896

22885

7590

05/17/2005

MCKEE, VOORHEES & SEASE, P.L.C.  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES, IA 50309-2721

EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/827,212

Applicant(s)

BRYAN ET AL.

Examiner

Steven M Marsh

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the second office action for U.S. Application 10/827,212 for a Device for Supporting a Medical Apparatus filed by Judith Lynn Bryan et al. on April 19, 2004.

#### ***Drawings***

The drawings were received on January 18, 2005. These drawings are not acceptable. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because on sheet 4, the "/4" should be deleted and replaced with - - 4/4 - -. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-7, 9, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,711,872 to Lampke. Lampke discloses a device with a base (24) mountable to a bed and a clamp (70 and 74). The clamp has opposing surfaces that

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can close and open (the elements 70 and 74 can be pushed apart and their resiliency will cause them to close) to hold a medical element in the closed position and release it when they are pushed open. There is a rod (48 and 50) extending between the base and the clamp and the base could slide in relation to the bed or pivot (depending on the degree to which the clamp on the base is tightened and what the base is secured to). The rod is rigid, length adjustable and pivotally connected to the base between a use and non-use position. The first end of the rod is connected to the base and the second end is connected to the clamp. The rod can be pivoted between operable and inoperable positions and is hooked to the base (36 hooks against the screw 30).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampke in view of U.S. Patent 5,645,335 to Brunner et al. Lampke does not disclose the base as being adhered to the bed. Brunner et al. discloses clamping and utilizing adhesive surfaces as functional equivalent means for securing (see col. 2, lines 41-43). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized an adhesive surface rather than a clamp, for the base taught by

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Lampke, as a simplified method of attachment because it is a functional equivalent as taught by Brunner et al.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampke in view of U.S. Patent 6,817,046 B1 to Srouer et al. Lampke does not specifically disclose a member having a foot adapted to fit beneath a bed mattress, a leg extending upwardly from the foot and an arm extending outwardly from the leg and adapted to support and position the base over the mattress. Srouer et al. discloses a crib that has feet (30), legs (22 and 26) extending upwardly from the feet, and an arm (28) extending outwardly from the leg (which would correspond to the part at 22 of Lampke). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized a crib such as the one taught by Srouer et al., in conjunction with the device taught by Lampke, as a known type of crib.

Claims 11-14, 16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampke in view of U.S. Patent 5,489,075 to Ible. Lampke does not disclose an articulated clamp. Ible discloses a bottle holder for fixing a bottle to an external object, with a base (18) that is connected to a tubular member at one end, with the tubular member being connected to an articulated clamp (20). The articulated clamp is designed to secure and release a baby bottle through simply actuating gripping portions (50 and 60). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized an articulated clamp, such as the clamp taught by Ible, in place of the clamp taught by Lampke, for the purpose of providing a clamp that can be easily operated to release and secure bottles of different sizes.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampke in view of Ible, and in further view of Brunner et al. Lampke in view of Ible does not disclose the base as being adhered to the bed. Brunner et al. discloses clamping and utilizing adhesive surfaces as functional equivalent means for securing (see col. 2, lines 41-43). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized an adhesive surface rather than a clamp, for the base taught by Lampke in view of Ible, as a simplified method of attachment because it is a functional equivalent as taught by Brunner et al.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampke in view of Ible, and in further view of Srour et al. Lampke in view of Ible does not specifically disclose a member having a foot adapted to fit beneath a bed mattress, a leg extending upwardly from the foot and an arm extending outwardly from the leg and adapted to support and position the base over the mattress. Srour et al. discloses a crib that has feet (30), legs (22 and 26) extending upwardly from the feet, and an arm (28) extending outwardly from the leg (which would correspond to the part at 22 of Lampke). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized a crib such as the one taught by Srour et al., in conjunction with the device taught by Lampke in view of Ible, as a known type of crib.

### ***Response to Arguments***

Applicant's arguments filed January 18, 2005 have been fully considered but they are not persuasive. Applicant concedes that Lampke teaches fingers that open and

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close together, but argues that the fingers do not "open to release" or "close to hold". However, the medical element is not positively recited in the claim. Therefore the fingers need only be capable of performing the stated function. The fingers could be configured to release an element in their open position and hold it in their closed position (depending on the size of the element the fingers could be pressed out of contact with the element and they would engage the element upon their release).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is


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(703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

SM

Steven M. Marsh

May 10, 2005

  
LESLIE A. BRAUN  
SUPERVISORY PATENT EXAMINER